

MEMORANDUM

Research Ordinance Commission

To: Councilman Ken Fleming

From: Bill Warner, County Attorney=s Office

Date: November 16, 2007

About: Chapter 116 Amendment and Reenactment

I=ve sent along with this memo, a revised version of Chapter 116 which includes the items you requested us to draft in at the Contracts & Appointments Committee meeting yesterday afternoon. Those changes are set out below. Please note that the highlighted portions of the draft represent changes discussed and approved at yesterday=s meeting.

1. Added a new ' 116.22(U) per Larry Zielke=s and your memos.
2. Revised ' 116.25 per Larry Zielke=s and your memos; deleted ' 116.23(a)(6) and edited ' 116.41(A)(14) based on the revision to ' 116.25.
3. Deleted ' 116.42(C)(2) and renumbered the remaining subsections; deleted subsection (D) based on the deletion of that subsection as well as ' 116.25, and redesignated the remaining subsections .
4. Edited ' 116.40 to change BellSouth to AT&T

In addition, I added two minor technical amendments to ' ' 116.22(M) and 116.(D)(1)(f) as requested by the administration [Public Works Department] for consideration by the Committee. I=ve attached a separate memo detailing those changes which I believe was provided to the Committee earlier this year.

Lastly, I edited ' 116.99 to be consistent with the renumbering of former ' 116.51.

There was a discussion at the Committee meeting as to whether or not ' 116.29(B) is duplicative of the provisions of ' 116.46 [as renumbered in the working draft]. I advised the Committee that I believed that the language in the draft before the Committee was not correct, and that it was likely the result of a collation error when the former County ordinance was transposed to a new Metro ordinance. I have confirmed that is what happened. In order to determine that, I looked at former Jefferson County Ordinance 116.29(B). The County ordinance was converted, supposedly verbatim, to a Metro

ordinance January 6, 2003 by the operation of KRS 67C.115(1)(a). Section 116.29(B) in the latter ordinance originally read:

A(B) The franchisee shall maintain an office in the County which shall be open to the public during normal business hours@

The former County ordinance, prior to its publication, was submitted to a digital Afind and replace@ protocol where the word ACounty@ was replaced by AMetro Government.@ In this instance, it changed the substantive meaning of the language such as to constitute a *de facto* amendment which it cannot legally do. Thus, in the new draft I prepared, I changed AMetro Government@ back to ACounty@ which it legally should be unless and until amended by the Council.

Taken in this - the proper - manner, there is a significant difference between the two sections in that ' 116.46, although mentioning an Aoffice@ does not require that office to Abe open to the public during regular business hours.@

Finally, my notes of the meeting reflect that there was no action taken on eliminating ' 116.41 as listed for attention in your memo, nor any action taken on ' 116.44 as recommended in Larry Zielke=s memo. I understand that there is ongoing discussion within the Administration about this section and the issue of reporting.

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